

First Irish scheme of arrangement for aircraft leasing sector

On 21 July 2020 the Irish High Court approved a scheme of arrangement for the world's largest regional aircraft lessor Nordic Aviation Capital DAC (Nordic).

The scheme, which included a 12-month standstill and deferral of c. US\$5 billion of secured and unsecured debt, was a market-first for the aircraft leasing industry and has been watched closely by others in the sector.

The Irish scheme had a number of innovative features:

- The Court assumed jurisdiction under Article 8(1) of the Recast Brussels Regulations on the basis that there was a single Irish-domiciled scheme creditor. This was the first occasion on which an Irish court followed the approach adopted by the English courts (in *Rodenstock*; *Magyar Telecom*; *Van Gansewinkel*) on matters of jurisdiction. It is a clear signal of the Irish court's willingness to take a flexible approach to accepting jurisdiction for schemes with an EU creditor base, requiring EU-wide recognition.
- By way of third party releases through the scheme, a waiver and deferral was imposed in respect of the obligations of each subsidiary (primary) borrower in the Nordic group. While the release of third party guarantee obligations is an accepted feature of both Irish and English scheme law, the ancillary releases granted through the Nordic scheme is a further development in this area. This is because the scheme company was the guarantor while the borrowers were the released third parties. The acceptance of this "single point of entry" structure demonstrated the willingness of the Irish High Court to adopt a broad interpretation of the pro-release line of scheme authority.
- In allowing the release of third parties, the Court applied the "sufficient nexus" test, stemming from recent Australian and Singaporean decisions (*Opes Prime Stockbroking*; *Pathfinder Strategic Credit*; *Tiger Resources*). Having satisfied itself that there was a sufficient nexus between the scheme and the released claims, the Court felt there was no requirement to apply the, arguably stricter, "necessity" test that has become a feature of third party release schemes in England.
- An application was successfully made for recognition of the scheme in the US via the Chapter 15 process.

While the Court did not make any binding determination as to the applicability of the Cape Town Convention to schemes of arrangement generally, Justice Barniville was satisfied that the Cape Town Convention did not preclude the Court from sanctioning the Nordic scheme, particularly in light of the fact that no secured creditor voted against the scheme.

Timeline

Despite an adjournment of the scheme meetings, which delayed progress of the scheme by over two weeks, the Commercial Division of the Irish High Court case-managed the process to complete in six weeks:

- **9 June 2020:** Irish High Court hearing to convene creditor meetings and launch the scheme
- **24 June 2020:** the scheme creditor meetings are called but adjourned to allow further negotiations between Nordic and creditors
- **3 July 2020:** a revised Scheme Circular is issued
- **9 July 2020:** adjourned scheme creditor meetings held
- **21 July 2020:** Sanction Hearing in front of Justice Barniville with a decision delivered, and court order made, on the same day.

Conclusion

Following the landmark decision in *Ballantyne Re plc* in June 2019, the Nordic scheme is a further endorsement that the Irish scheme of arrangement process can be used to implement complex, cross border restructurings. Against timing and liquidity challenges faced by Nordic, the Court ensured that the scheme was completed in a compressed timeline.

A&L Goodbody acted with Milbank LLP and EY Dublin for an Ad Hoc Committee of secured lenders. For further information, please contact [David Baxter](#), [David Berkery](#) or [Stephen Ahern](#).

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